

COUNSEL TO GREAT COMPANIES


Stanwood-Camano School District
Board Training
 Open Public Meetings, Public Records,
 Records Retention, and Collective
 Bargaining

December 5, 2023

Presented by:
 Valerie L. Hughes

PERKINS COIE LLP

1



COUNSEL TO GREAT COMPANIES

Open Public Meetings Act
 Chapter 42.30 RCW

PERKINS COIE LLP | PERKINS COIE.COM

PERKINS COIE

2

Purpose of the OPMA

The legislature finds all public boards exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people insist on remaining informed so that they may retain control over the instruments they have created.

RCW 42.30.010

PERKINS COIE LLP | PERKINS COIE.COM

PERKINS COIE

3

General Rules

- Quorum of 3 members needed for a meeting
- Three types of meetings: Open; Executive Session; and Closed
- Presume meeting is Open unless an exception applies

4 Perkins Coie LLP | PerkinsCoie.com

PERKINS COIE

4

Open Meeting

Where the majority of the Board's work must be done



5 Perkins Coie LLP | PerkinsCoie.com

PERKINS COIE

5

Executive Session

- Must be part of a regular meeting or special meeting with the Board adjourning to Executive Session
- Must announce the reason for going into Executive Session and the time the session will conclude
- No minutes of the Executive Session are required to be recorded

6 Perkins Coie LLP | PerkinsCoie.com

PERKINS COIE

6

Confidentiality of Executive Session

- Information learned in Executive Session is confidential
- Disclosure of confidential information learned by reason of one's official position is prohibited. RCW 42.23.070

7 Perkins Cole LLP | PerkinsCole.com

PERKINS COLE

7

Executive Session – Permissible for:

- Review of complaints or charges against an employee or public officer (Board member)
- Review of the performance of a public employee
- Evaluation of the qualifications of an applicant for employment
- Evaluation of the qualifications of candidates for Board appointment

8 Perkins Cole LLP | PerkinsCole.com

PERKINS COLE

8

Executive Session – Permissible for: (cont'd)

- Sale or lease of real estate when public knowledge would be likely to cause an increased price
- Acquisition of real estate when public knowledge would be likely to cause an increased price
- Review of performance on publicly bid contracts when public knowledge would cause a likelihood of increased costs

9 Perkins Cole LLP | PerkinsCole.com

PERKINS COLE

9

Executive Session – Permissible for: (cont'd)

- Discussion with legal counsel of litigation or potential litigation when public knowledge would be likely to result in an adverse legal or financial condition

10 Perkins Cole LLP | PerkinsCole.com

PERKINS COLE

10

Closed Meetings: Not Subject to the OPMA

- Collective bargaining – negotiations, planning and adopting strategy, reviewing proposals
- Quasi-judicial meetings with a named party— student discipline, HIB, and discrimination appeals
- Social gatherings where Board business is not discussed

11 Perkins Cole LLP | PerkinsCole.com

PERKINS COLE

11

Unintended Meetings

- Serial meetings
- Meetings by email or text

12 Perkins Cole LLP | PerkinsCole.com

PERKINS COLE

12

Effects of Violation

- Void action
- Personal liability in the form of a \$100 civil penalty
- Award of attorneys' fees and costs
- Adverse publicity
- State Auditor finding

13 Perkins Coe LLP | PerkinsCoe.com **PERKINSCOPE**

13

COUNSEL TO GREAT COMPANIES

Public Records Act
Chapter 42.56 RCW

Perkins Coe LLP | PerkinsCoe.com **PERKINSCOPE**

14

Purpose of the PRA

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.

RCW 42.56.030

15 Perkins Coe LLP | PerkinsCoe.com **PERKINSCOPE**

15

Interpretation of the PRA

- The PRA is to be liberally construed
- The exemptions from the PRA are to be narrowly construed

16 Perkins Cole LLP | PerkinsCole.com

PERKINS.COLE

16

What Are Public Records?

- Assume everything is a public record – any writing that contains information relating to the conduct of government or the performance of a governmental or proprietary function
- “Writing” includes paper records, electronic records, texts, emails, video and audio recordings, photographs, etc.

17 Perkins Cole LLP | PerkinsCole.com

PERKINS.COLE

17

Location of Public Records Irrelevant

- It does not matter whether the record is on your personal computer, personal smart phone, or District computer
- Recommend that you always use District email account for District business so records can be searched
- Do not create records you do not want to share

18 Perkins Cole LLP | PerkinsCole.com

PERKINS.COLE

18

Use of Email and Texts

- Limit District business to District account
- Maintain vigilance over appropriateness and confidentiality
- Avoid unintended "meeting"
- *Battleground* case study

19 Perkins Coie LLP | PerkinsCoie.com

PERKINS COIE

19

Responding to a Request for Records

- Cannot distinguish among people who request records
- Initial 5-day response period
- Estimate time for response
- Must disclose all records that are not "exempt"; any denial must be justified by a written statement explaining the exemption claimed

20 Perkins Coie LLP | PerkinsCoie.com

PERKINS COIE

20

Intersection of the PRA and the OPMA

- Each operates independently
- An exception to the OPMA does not necessarily mean an exemption from the PRA

21 Perkins Coie LLP | PerkinsCoie.com

PERKINS COIE

21

The Costs of the Public Records Act

- Judicial review of exemptions claimed or untimely responses
- Costs and penalties
 - Reasonable attorneys' fees and costs
 - Penalties of up to \$100 per day per document
- Costs of compliance are substantial
- Costs of noncompliance are staggering
 - Monetarily
 - Loss of public trust

22 Perkins Cole LLP | PerkinsCole.com **PERKINS.COLE**

22

OPMA and PRA – Board Roles

- Establish a culture of compliance
- Ensure personal compliance
- Monitor one another
- Ask questions if unsure
- Support District leaders and staff in compliance efforts

23 Perkins Cole LLP | PerkinsCole.com **PERKINS.COLE**

23

COUNSEL TO GREAT COMPANIES

Records Retention
Chapter 40.14 RCW

Perkins Cole LLP | PerkinsCole.com **PERKINS.COLE**

24

What to Save?

- Secretary of State
- State Archives
 - Records Retention Schedules
 - Local Government
 - School District

25 Perkins Cole LLP | PerkinsCole.com **PERKINS.COLE**

25

COUNSEL TO GREAT COMPANIES

Collective Bargaining
Chapters 41.56 and 41.59 RCW

Perkins Cole LLP | PerkinsCole.com **PERKINS.COLE**

26

Legal Framework

- Duty to bargain in good faith (be available; try hard to reach agreement; and engage in give and take)
- Must bargain on mandatory subjects (wages, hours, and working conditions) and must be willing to talk about "permissive" proposals
- Duty to enter a contract reflecting the agreements reached

27 Perkins Cole LLP | PerkinsCole.com **PERKINS.COLE**

27

The Board's Role in Bargaining

- Oversight of team's strategy
- Confidence in team
- Setting of parameters
- Avoidance of gaffes
- Low profile
- Three-weeks-into-the-strike parameters

28 PERKINS COLE LLP | PERKINS-COLE.COM

PERKINS COLE

28

Communications in Negotiations

- Single spokesperson
 - For the District
 - Not typically a Board member (usually not)
- Low profile
 - Board thrashing hurts

29 PERKINS COLE LLP | PERKINS-COLE.COM

PERKINS COLE

29

Communications in Negotiations (cont'd)

- Hazards of Board comments
 - Difficult to get it right and avoid misinterpretations
 - Hardest thing to say: nothing
 - Can cause mischief
 - "Lone Rangers," in private dialogues, do not help
 - Best bet: Inappropriate to comment; refer to District spokesperson

30 PERKINS COLE LLP | PERKINS-COLE.COM

PERKINS COLE

30
